

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dillon Bezeherntny	Team: Squad #12	CCRB Case #: 202201877	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Monday, 03/21/2022 11:45 PM	Location of Incident: Inside Target (located at 40 West 225th Street)	18 Mo. SOL 9/21/2023	Precinct: 52
Date/Time CV Reported Thu, 03/24/2022 3:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 03/24/2022 3:27 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Alfredo Alba	00145	933598	SRG 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Ivan Lugo	28665	944111	SRG 2

Officer(s)	Allegation	Investigator Recommendation
A. PO Alfredo Alba	Discourtesy: Police Officer Alfredo Alba spoke discourteously to § 87(2)(b)	
B. PO Alfredo Alba	Abuse: Police Officer Alfredo Alba entered the employee entrance of Target at 40 West 225th Street, Bronx, NY, 10463.	
C. PO Alfredo Alba	Force: Police Officer Alfredo Alba used physical force against § 87(2)(b)	
D. PO Alfredo Alba	Abuse: Police Officer Alfredo Alba stopped § 87(2)(b)	
E. PO Alfredo Alba	Abuse: Police Officer Alfredo Alba refused to provide his name to § 87(2)(b)	
F. PO Alfredo Alba	Abuse: Police Officer Alfredo Alba refused to provide his shield number to § 87(2)(b)	
G. PO Alfredo Alba	Abuse: Police Officer Alfredo Alba failed to provide § 87(2)(b) with a business card.	

Case Summary

On March 24, 2022, § 87(2)(b) filed this complaint online with CCRB.

On March 21, 2022, at approximately 11:45 p.m., § 87(2)(b) and § 87(2)(b) were waiting by the employee entrance of their workplace, the Riverdale Target located at 40 West 225th Street in the Bronx, when Police Officer Alfredo Alba and Police Officer Ivan Lugo, of the Strategic Response Group (SRG) 2, arrived at the outside of the closed employee entrance. PO Alba and PO Lugo told § 87(2)(b) to open the door because they had received a call that someone was impersonating a Target employee at that location. § 87(2)(b) told PO Alba, who he could see through a small rectangular windowpane on the door, that he could not open the door as a matter of company policy; the building was armed and disarming the alarm required a supervisor. PO Alba cursed at § 87(2)(b) when he would not open the door (**Allegation A: Discourtesy**, § 87(2)(g) § 87(2)(b) called one of the acting managers for that night, § 87(2)(b) to come help with the situation. § 87(2)(b) arrived at the employee entrance, disarmed the building, then opened the employee entrance door, at which time PO Alba stepped inside to approach § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g) PO Alba asked § 87(2)(b) if he worked at Target, which he confirmed he did. PO Alba wanted to document that he and PO Lugo had responded to the scene, so he requested § 87(2)(b) ID, which § 87(2)(b) refused to provide. PO Alba then asked § 87(2)(b) if § 87(2)(b) worked at Target, which § 87(2)(b) confirmed. § 87(2)(b) began to walk past PO Alba to leave the encounter, but PO Alba grabbed him by his arm and pulled him back away from the door (**Allegation C: Force**, § 87(2)(g) **Allegation D: Abuse of Authority**, § 87(2)(g) After § 87(2)(b) continued refusing to provide his ID, PO Alba asked § 87(2)(b) if he would provide his ID instead, which he did. PO Alba took down § 87(2)(b) information, at which point § 87(2)(b) indicated he wanted PO Alba's name and shield number, which he allegedly failed to provide verbally (**Allegation E: Abuse of Authority**, § 87(2)(g) **Allegation F: Abuse of Authority**, § 87(2)(g) PO Alba and PO Lugo left the incident location without PO Alba providing § 87(2)(b) with a business card (**Allegation G: Abuse of Authority**, § 87(2)(g) § 87(2)(b)

§ 87(2)(b) was never arrested nor issued a summons as a result of this incident.

On April 8, 2022, the NYPD Legal Bureau provided CCRB with body-worn camera footage from Police Officer Alfredo Alba and Police Officer Ivan Lugo.

On April 11, 2022, CCRB received security footage from Target's Asset Protection Department depicting the exterior of the employee entrance door.

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Alfredo Alba spoke discourteously to § 87(2)(b)

Target's security footage (**Board Review 01**) takes place on March 21, 2022, starts at 23:44:47 and ends at 23:54:50, lasts 10 minutes and 3 seconds, is in color, and has timestamps that appear to be accurate, though there is no audio. The video begins at 11:44 p.m. and depicts a marked NYPD SUV pull up and park along West 225th Street near the Riverdale Target's employee entrance. At durational timestamp 00:32, PO Alba and PO Lugo walk up to the employee entrance door. First PO Lugo knocks on the door and appears to speak to someone on its other side. Shortly thereafter, PO Alba appears to speak with someone through the door as well. The officers wait outside the door until it opens at durational timestamp 03:03.

At 11:45 p.m. on March 21, 2022, § 87(2)(b) (**Board Review 02**) was waiting with § 87(2)(b) by

the employee entrance waiting to go home for the night because the store was closed to the public and, as a matter of company policy, the building was armed with an alarm system that can only be deactivated by a supervisor. § 87(2)(b) went over the Target radio system to request one of the managers for that night's shift, § 87(2)(b) come disarm the building so he and § 87(2)(b) could leave. While § 87(2)(b) was on his way to the employee entrance, PO Alba and PO Lugo arrived outside the employee entrance asking § 87(2)(b) to open the door. PO Alba told § 87(2)(b) he had gotten a 911 call about a person impersonating a Target employee and he needed to make sure everything was okay. § 87(2)(b) told PO Alba there was nobody in the office to let him in through the buzzer system, at which point PO Alba told § 87(2)(b) "Open the fucking door, I'm not here to play games." § 87(2)(b) told PO Alba that he could not open the door because the building was armed, to which PO Alba responded, "Open the fucking door right now. I'm not here to waste any time, I'm here for a reason."

§ 87(2)(b) (**Board Review 03**) was working as one of two team leads for the night shift. § 87(2)(b) called for him to come by the employee entrance and disarm the building so that § 87(2)(b) and § 87(2)(b) could leave for the night. While on his way to the employee entrance door, § 87(2)(b) received a call on his personal phone from § 87(2)(b) who told him that two police officers had arrived at the employee entrance door and were telling him to open it. § 87(2)(b) rushed to the employee entrance, arriving to see the interaction between § 87(2)(b) standing directly next to the door and facing outside, and PO Alba, immediately on the other side of the closed door, was "already heated." § 87(2)(b) stated that there was profanity used by both § 87(2)(b) and PO Alba. § 87(2)(b) could not recall the specific statements PO Alba made but knew they involved the words "fuck" and "shit" in conversation with § 87(2)(b). When asked if the profanity used by PO Alba was directed at § 87(2)(b) or was more conversational in nature, § 87(2)(b) stated that it was a little of both.

PO Alba (**Board Review 04**) and PO Lugo responded to a 911 call that came over the radio for an individual with the description "male, Black" impersonating a Target employee at the Riverdale Target in the Bronx. Upon responding to the incident location, PO Alba and PO Lugo saw that there were gates blocking entrances to the parking areas and another gate blocking the front doorway into the store, so PO Lugo turned around and drove to the employee entrance "where employees go in and out." PO Alba approached the employee entrance door, which had a small square window, and saw § 87(2)(b) and § 87(2)(b) standing on the other side of the closed door. Through the closed door, PO Alba told § 87(2)(b) that he and PO Lugo were responding to a 911 call regarding an individual impersonating a Target employee, then asked § 87(2)(b) to open the door. § 87(2)(b) had "attitude immediately" and told PO Alba that he could not open the door, which PO Alba took to mean opening the employee entrance door was against Target's store policies. PO Alba believed that § 87(2)(b) speaking through the door, told the officers that he worked at Target. PO Alba stated that he "probably did" use profanity during the interaction, though he could not recall what specific profanity he may have used. PO Alba believed he "did say "Open the fucking door." PO Alba could not remember if he said, "Open the fucking door right now, I have a job to do." PO Alba used the word "fucking" because § 87(2)(b) refused to open the door.

Police Officer Ivan Lugo (**Board Review 05**) stated that he never heard PO Alba use any profanity during the incident.

Officers should treat every citizen with courtesy, respect, and civility as per NYPD Patrol Guide Procedure 200-02 (**Board Review 06**). In an NYPD department trial, the court held that, although an officer may have good intentions, the use of discourteous language with the public is unprofessional. *Disciplinary Case No. 2018-18951* (**Board Review 07**).

§ 87(2)(b) alleged that PO Alba issued the following statements to him: “Open the fucking door, I’m not here to play games,” and “Open the fucking door right now. I’m not here to waste any time, I’m here for a reason.” Though PO Lugo stated he did not hear PO Alba use any profanity throughout the incident, PO Alba testified that he “probably did” use profanity during his interaction with § 87(2)(b) and though he could not recall specifically what he said, he believed he did say something to the effect of, “Open the fucking door.” PO Alba stated he used that specific language because § 87(2)(b) adamantly refused to open the door. Though the alleged profanity is not captured on body-worn camera, security footage from Target shows that there were approximately three minutes where PO Alba and PO Lugo were on scene appearing to verbally interact with someone through the closed employee entrance door prior to the activation of PO Alba’s BWC.

Given that PO Alba said he “probably did” use profanity with § 87(2)(b) and believed he said something to the effect of “open the fucking door,” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Alfredo Alba entered 40 West 225th Street in the Bronx.

PO Alba’s body-worn camera (**Board Review 08**) captures the entirety of the incident from the point the employee entrance door is open to the incident’s conclusion. The video begins with PO Alba just outside the employee entrance door. At durational timestamp 00:13, the door opens outward a few inches, pushed open by § 87(2)(b) at which point PO Alba grabs the handle, pulls the door fully open, and steps inside the employee entrance. As PO Alba walks through the door, § 87(2)(b) back is turned towards PO Alba, interfacing with a keypad on the wall. There is no audio to this point in the BWC, though there does not appear to be any verbal or nonverbal interaction between PO Alba and § 87(2)(b) as the door is opened and PO Alba enters.

§ 87(2)(b) (**Board Review 02**) stated § 87(2)(b) opened the door and entered a code into a panel to disarm the building’s alarm system. Immediately after the door was opened, PO Alba walked through the threshold, past § 87(2)(b) and § 87(2)(b) and up to § 87(2)(b) PO Alba requested § 87(2)(b) identify himself. PO Alba never spoke to § 87(2)(b) prior to entering the employee entrance or otherwise asked for permission to enter the premises.

§ 87(2)(b) (**Board Review 03**) stated that once he got to the employee entrance door, he opened it, anticipating that § 87(2)(b) and § 87(2)(b) would leave for the night and the officers would come in and walk around the building to ensure the subject of the 911 call, the Target employee impersonator, was not in the building. § 87(2)(b) did not say anything to the officers prior to opening the door, nor did any officer say anything to him prior to opening the door. Once the door was opened, § 87(2)(b) and PO Alba spoke at the threshold of the door. PO Alba told § 87(2)(b) that he was responding to a 911 call about somebody being trapped in the store. § 87(2)(b) stated that no officer asked for permission to enter the employee entrance, nor did he ever provide verbal or nonverbal permission for any officer to enter the area. § 87(2)(b) stated he also did not provide a verbal or nonverbal indication that he did not want the officers to enter the area.

PO Alba stated (**Board Review 04**) that roughly two minutes after he approached the employee

entrance, § 87(2)(b) came to open the door. PO Alba could not see § 87(2)(b) open the door as the door's window was very small and § 87(2)(b) was not very tall. PO Alba entered through the employee entrance door. PO Alba did not request permission to enter through the employee entrance. § 87(2)(b) did not verbally or nonverbally indicate that PO Alba was not welcome to enter. PO Alba stated that he entered the employee entrance to investigate the 911 call he was responding to.

PO Lugo (**Board Review 05**) stated that PO Alba entered the store to conduct an investigation regarding the 911 impersonation call. § 87(2)(b) did not interact with anyone on scene aside from informing the officers that he was the manager for Target that night and providing his ID to the officers. Prior to PO Alba entering Target, § 87(2)(b) neither verbally nor nonverbally indicated that he did not want PO Alba to enter.

A civilian opening a door and stepping aside from the door constitutes implicit consent for police to enter the area. People v Xochimiltl, 147 A.D.3d 793 (**Board Review 10**).

It is undisputed that PO Alba entered the employee entrance and did not explicitly request permission to enter prior to doing so. It is also undisputed that nothing was conveyed by § 87(2)(b) the acting manager with the apparent authority to provide consent to enter, to indicate that PO Alba was or was not welcome to enter. As it is depicted in PO Alba's BWC at durational timestamp 00:13 that § 87(2)(b) pushes the employee entrance door open, then turns around and steps to the side to interface with a keypad, § 87(2)(g)

Allegation (C) Force: Police Officer Alfredo Alba used physical force against § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Alfredo Alba stopped § 87(2)(b)

At durational timestamp 00:48, PO Alba's BWC (**Board Review 08**) depicts § 87(2)(b) who is standing at the back of the employee entrance such that PO Alba is between him and the door to exit the employee entrance, takes two to three steps in the direction of the door. PO Alba grabs § 87(2)(b) left bicep just above the elbow and pulls § 87(2)(b) away from the door towards where he was initially standing when PO Alba entered the room, preventing § 87(2)(b) from leaving. At 01:00, audio begins. PO Alba says, "We'll run a report and we'll determine that." § 87(2)(b) tells PO Alba that he works at Target. PO Alba looks to § 87(2)(b) who nods. PO Alba tells § 87(2)(b) that he needs to see some ID.

§ 87(2)(b) (**Board Review 02**) stated that at some point he began to move towards the door of the employee entrance to leave since he had been told by PO Lugo that he was free to go. PO Alba was partially obstructing the path to the door, and as § 87(2)(b) began to make his way out of the building § 87(2)(b) said, "Excuse me" to PO Alba. PO Alba's right arm grabbed § 87(2)(b) by his left bicep and pulled him back near the wall near where § 87(2)(b) was originally standing. PO Alba told § 87(2)(b) that he is not leaving until he identifies himself to the officers. § 87(2)(b) declined to identify himself, citing that § 87(2)(b) already confirmed § 87(2)(b) employment status with Target.

§ 87(2)(b) (**Board Review 03**) stated that PO Alba never physically interacted with § 87(2)(b)

PO Alba (**Board Review 04**) stated that, as far as the impersonation radio run was concerned, he

had done his job after speaking with § 87(2)(b). However, PO Alba wanted to further document that he spoke to § 87(2)(b) and that § 87(2)(b) refused to open the door, thus documenting a reason for the slow response time to the 911 call and the investigative steps that PO Alba was able or unable to take as a result. PO Alba wanted this documentation to ensure he had proof that he had done his duty properly. § 87(2)(b) was adamant that he did not have to identify himself to PO Alba. After asking § 87(2)(b) to provide identification for some period of time, § 87(2)(b) attempted to leave the employee entrance vestibule and end the interaction. PO Alba used his right arm to stop § 87(2)(b) by grabbing his left arm by the bicep area and pulling him away from the door. As a result of this physical contact, § 87(2)(b) took a step or two away from the door. PO Alba testified that § 87(2)(b) was considered stopped at that point. PO Alba stopped § 87(2)(b) because he wanted § 87(2)(b) ID for documentation but did not suspect § 87(2)(b) of any crimes at the time.

PO Lugo (**Board Review 05**) testified that, at one point, § 87(2)(b) attempted to leave the interaction. PO Alba stepped in front of § 87(2)(b) to prevent him from leaving, asking for § 87(2)(b) ID. PO Lugo began reviewing PO Alba's BWC from durational timestamp 00:34 until 00:56. PO Lugo recognized the events depicted in the BWC and stated that he saw PO Alba make physical contact with § 87(2)(b) as he tried to leave, preventing § 87(2)(b) from leaving. PO Lugo stated that, at that point, § 87(2)(b) was stopped. PO Lugo stated that he and PO Alba had confirmation from § 87(2)(b) that § 87(2)(b) was a Target employee prior to § 87(2)(b) trying to leave.

Officers must use reasonable force whenever possible. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy. *NYPD Patrol Guide* Procedure 221-01 (**Board Review 11**). Officers may not use force during a Level 2 encounter. *NYPD Patrol Guide* Procedure 212-11 (**Board Review 13**). Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the Criminal Procedure Law authorizes a forcible stop and detention of that person. People v. DeBour 40 N.Y. 2d 210 (1976) (**Board Review 12**).

As discussed above, PO Alba's BWC unambiguously depicts that § 87(2)(b) attempts to walk towards the exit of the employee entrance vestibule when PO Alba grabs § 87(2)(b) left bicep and pulls him away from the door, preventing § 87(2)(b) from leaving the encounter and restricting his freedom of movement. PO Alba and PO Lugo both testified that, following the physical interaction between PO Alba and § 87(2)(b), § 87(2)(b) was considered stopped. PO Alba also testified that § 87(2)(b) was stopped to get his ID to further document that he had taken the proper investigative steps to address the 911 call, therefore simply conducting a request for information unrelated to any suspicion of criminal activity perpetrated by § 87(2)(b). The encounter between PO Alba and § 87(2)(b) can thus be designated a Level 1 Encounter. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Alba also testified that he did not suspect § 87(2)(b) of any crimes at the time § 87(2)(b) was stopped. § 87(2)(g) PO Alba did not suspect § 87(2)(b) of any crimes at the time he stopped § 87(2)(b). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Alfredo Alba refused to provide his name to

§ 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Alfredo Alba refused to provide his shield number to § 87(2)(b)

At durational timestamp 03:05 (**Board Review 08**), PO Alba says, "145," which is his badge number. § 87(2)(b) is within two to three feet of PO Alba at this time but is speaking on the phone with a supervisor of Target. At 03:15, PO Alba says, "145, 145." § 87(2)(b) is still within two to three feet of PO Alba at this time. § 87(2)(b) is heard saying "Alba" at this time.

§ 87(2)(b) (**Board Review 02**) requested the officers' names and shield numbers, at which point PO Alba pointed to his shield and said, "There is my name and badge number," allegedly never verbally providing either piece of information to § 87(2)(b). PO Lugo verbally provided § 87(2)(b) with his name and shield number.

§ 87(2)(b) (**Board Review 03**) stated that, at some point, § 87(2)(b) told PO Alba he was going to file a complaint, at which time PO Alba provided § 87(2)(b) with his badge number and precinct.

PO Lugo (**Board Review 05**), standing roughly 4-5 feet from § 87(2)(b) heard § 87(2)(b) request PO Alba's name and shield. PO Lugo noted that PO Alba stated "Alba, 145" to verbally provide his name and shield to § 87(2)(b).

It is clear from PO Alba's BWC that PO Alba verbally provided his name and shield multiple times to § 87(2)(b) from within close proximity § 87(2)(g).

Allegation (H) Abuse of Authority: Police Officer Alfredo Alba failed to provide § 87(2)(b) **with a business card.**

PO Alba's BWC (**Board Review 08**), which captures the entirety of the incident from the point the employee entrance door is opened to the incident's conclusion, does not capture PO Alba providing § 87(2)(b) with a business card. § 87(2)(b) (**Board Review 02**) stated that he did not receive a business card from PO Alba or PO Lugo during the incident.

PO Alba told § 87(2)(b) (**Board Review 02**) that he could not leave until he identified himself to the officers. § 87(2)(b) declined to identify himself, citing that § 87(2)(b) already confirmed § 87(2)(b) employment status with Target. PO Alba told § 87(2)(b) "Oh, you're still not going to identify yourself? Then you're not going to leave." § 87(2)(b) stated that he never received a business card from PO Alba.

§ 87(2)(b) (**Board Review 03**) never received a business card from PO Alba or PO Lugo.

PO Alba (**Board Review 04**) did not provide a business card to anyone on scene. PO Alba stated that he did not believe he was obligated to provide a business card to anyone on scene because none of the civilians were stopped and he was not speaking to § 87(2)(b) based on his own suspicion of criminality. § 87(2)(b) attempted to leave the employee entrance vestibule and end the interaction. PO Alba used his right arm to stop § 87(2)(b) by grabbing his left arm by the bicep area and pulling him away from the door. As a result of this physical contact, § 87(2)(b) took a step or two away from the door. PO Alba amended his earlier testimony that none of the civilians were stopped, testifying that § 87(2)(b) was considered stopped at that point.

PO Lugo (**Board Review 05**) had business cards on his person on the incident date because he always carries them. Neither PO Lugo nor PO Alba offered § 87(2)(b) a business card since § 87(2)(b) did not ask for one. PO Lugo began reviewing PO Alba's BWC from durational timestamp 00:34 until 00:56. PO Lugo stated that he saw PO Alba make physical contact with § 87(2)(b) as he tried to leave, preventing § 87(2)(b) from leaving. PO Lugo stated that, at that point, § 87(2)(b) was stopped.

Officers are to offer a business card to a civilian when a civilian is stopped or when a reasonable person would otherwise not feel free to end the encounter. *Administrative Guide* Procedure 304-11 (**Board Review 14**).

It is undisputed that PO Alba stopped § 87(2)(b) and that § 87(2)(b) was never given a business card,

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 15**).
- Police Officer Alfredo Alba has been a member of service for 18 years (**Board Review 16**) and has been a subject in 4 CCRB complaints and 9 allegations, of which one was substantiated.
 - CCRB Case 200615469 involved a substantiated allegation of retaliatory summons against PO Alba. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 13, 2022, the NYC Office of the Comptroller confirmed that there is no record of a notice of claim filed by § 87(2)(b) regarding this incident (**Board Review 17**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 11

Investigator:	<u>Dillon Bezehertny</u>	<u>Investigator Bezehertny</u>	<u>05/10/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Edwin Pena</u>	<u>IM Edwin Pena</u>	<u>07/20/22</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date